

Message Text

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ACTION STR-07

INFO OCT-01 EA-10 IO-13 ISO-00 COME-00 DODE-00 INT-05
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CTME-00 AID-05 SS-15 ITC-01 ICA-11 SP-02 SOE-02
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TO SECSTATE WASHDC PRIORITY 3771
INFO USMISSION GENEVA

LIMITED OFFICIAL USE CANBERRA 5478

USMTN

E.O. 11652: N/A
TAGS: ETRD, GATT, MTN, AS
SUBJECT: COMMERCIAL COUNTRFEITING

REF: (A) STATE 167575, (B) CANBERRA 5342

1. DEPARTMENT OF BUSINESS AND CONSUMER AFFAIRS (BCA) HAS
NOW CONFIRMED THAT INSTRUCTIONS TO GOA GENEVA DELEGATION
ALONG LINES OURTEL REFERENCE (B) ACKNOWLEDGED ON MONDAY,
JULY 10.

2. CONCERNING PRESENT LAW IN AUSTRALIA ON FORFEITURE, BCA
ALSO ADVISES THAT RELEVANT LEGISLATION CONTAINED IN THE TRADE
MARKS ACT OF 1955 AND THE ADMINISTRATIVE APPEALS TRIBUNAL ACT
OF 1975. COPIES OF RELEVANT PORTIONS OF THESE ACTS PROVIDED
BY BCA BEING FORWARDED BY POUCH. A SUMMARY OF RELEVANT
PROVISIONS IS AS FOLLOWS: IN AUSTRALIAN LAW, THE PROTECTION
OF MERCHANDISE FROM INFRINGEMENT OF TRADE MARK OR TRADE NAME
(IMPORTED INTO THE COMMONWEALTH AND ENTITLED TO PROTECTION OF
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COMMONWEALTH LAW) IS COVERED BY SECTIONS 100 AND 101 OF THE
TRADE MARKS ACT. THESE PROVISIONS PROVIDE THAT IN CASES OF
FORGERY THE GOVERNMENT OF THE COMMONWEALTH CAN FORFEIT THE
OFFENDING MERCHANDISE TO THE COMMONWEALTH. THE RELEVANT
PROCEDURES ARE COVERED BY THE PROVISIONS OF THE ADMINISTRATIVE
APPEALS TRIBUNAL ACT. UNDER THESE PROVISIONS, WHEN AN
AGGRIEVED PARTY APPEALS TO THE GOA, THE GOA CAN MOVE FOR

EXPEDITIOUS HEARING/S BEFORE THE TRIBUNAL AND, UPON CONVICTION,
CAN ORDER THE SEIZURE AND THE FOREFEITURE TO THE GOVERNMENT
OF THE COMMONWEALTH OF THE SAID MERCHANDISE.

3. THE BCA ADVISES THAT COMMONWEALTH LAW SUPERSEDES STATE
LAWS IN ALL SUCH CASES. RELEVANT PORTIONS OF THE COMMON-
WEALTH LAW CONCERNING THE JURISDICTION OF THE DEPARTMENT OF
PRODUCTIVITY, THE CONTROLLER GENERAL OF CUSTOMS AND THE
DEPARTMENT OF BUSINESS AND CONSUMER AFFAIRS IN SUCH MATTERS
ARE INCLUDED IN THE RELEVANT PORTIONS OF THE ACTS BEING
FORWARDED BY POUCH.

ALSTON

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